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**EX PARTE OR LATE FILED**

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December 14, 1999

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**Ex Parte**

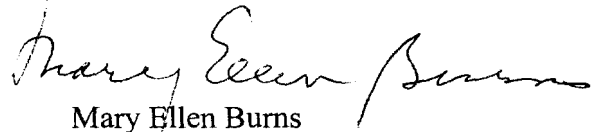
Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: *CC Docket No. 99-295: In the Matter of Application by New York Telephone Company (d/b/a Bell Atlantic-New York), Bell Atlantic Communications, Inc., and Bell Atlantic Global Networks, Inc., For Authorization to Provide In-Region, InterLATA Services in New York*

Dear Secretary Salas:

Please find attached a statement of the New York State Attorney General submitted in response to the Commission's Public Notice dated December 3, 1999 and its Public Notice dated December 10, 1999, each inviting *ex parte* submissions by interested parties on *ex parte* filings in the above docket. In addition to filing electronically, we are sending hard copies by overnight mail.

Sincerely,

  
Mary Ellen Burns

cc: Janice Myles  
ITS

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**EX PARTE STATEMENT OF NEW YORK STATE ATTORNEY GENERAL**

By public notices dated December 3 and December 10, 1999, the Commission invited interested parties to make *ex parte* submissions on evidence presented *ex parte* to the Commission by the New York State Public Service Commission ("NYSPSC"), the Department of Justice ("DOJ"), Bell Atlantic-New York ("BA-NY"), and other parties. In this submission we respond only to evidence presented by the NYSPSC and BA-NY relevant to the issues we have previously identified as problematic for approval of BA-NY's Section 271 application, specifically: the flow-through of orders for unbundled network elements ("UNEs"), the provisioning of UNE loop "hot cuts," the retention of directory listings, and the provisioning of xDSL loops. We have not seen any *ex parte* filing by DOJ, and have reason to believe that there has been none to date.

**1. Flow-Through of UNE Orders**

BA-NY and the NYSPSC have submitted evidence *ex parte* supplementing the UNE order flow-through measurements set out in the Carrier to Carrier Performance Standards and Reports, Bell Atlantic-New York State ("C2C Reports") for September 1999 and previous months. In particular, the NYSPSC filed additional information on December 2 and December 7, 1999; and BA-NY filed additional information on November 29 and December 6, 1999. This additional evidence does not indicate that BA-NY has improved significantly its ability to process competing local provider ("CLEC") orders for UNEs.

The NYSPSC *ex partes* appear to rearrange existing data into new categories, to focus on flow-through orders for simple telephone service ("POTS"). This data shows flow-through rates in September of 60.40% for all UNE orders for POTS and 66% for UNE-Platform orders for POTS. While it is not entirely clear how to compare this data to the September C2C Report data, these results are nevertheless in the same range as the September C2C measurements for UNE order flow-through for total orders and for simple orders.<sup>1</sup> As such, they do not provide a basis to conclude that BA-NY has improved its performance on flow-through of CLEC UNE orders.

BA-NY's November 29 *ex parte* filing addresses UNE order flow-through first by asserting that there is no meaningful way to compare BA-NY's internal processing of retail customer orders with the company's processing of CLEC UNE orders. If true, then the question still remains whether UNE order flow-through rates in the 60-70% range provide a meaningful opportunity for CLECs to compete.

Despite its stated skepticism of comparisons between its internal handling of retail orders and its processing of UNE orders, BA-NY goes on to identify the inputting of simple retail orders through its Direct Order Entry ("DOE") system as the closest analogy to UNE processing. BA-NY offers a comparison between the percentage of total retail orders handled through its DOE (61%) with the percentage of total UNE orders flowing through (62.81% in September 1999) as a means to gauge whether it is affording CLECs parity in the processing of UNE orders.

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<sup>1</sup> *Carrier to Carrier Performance Standards and Reports, Bell Atlantic - New York, September 1999* measurements of flow-through for all UNE order types show a flow-through rate of 62.81% for total UNE orders (metric OR-5-01: % Flow Through - Total) and 64.00% for all simple UNE orders (metric OR-5-02: % Flow Through - Simple).

The limited amount of information BA-NY has provided about its DOE system makes it difficult to judge how analogous DOE is to UNE processing. It seems likely that the relevant comparison is not the one BA-NY makes, but rather a comparison between the percentage of DOE orders that flow through with the percentage of CLECs' UNE-Platform POTS orders that flow through. (BA-NY's DOE by definition processes only simple retail orders, and such orders are primarily for residential service. The UNE-Platform POTS orders are also primarily for residential service.) BA-NY does not indicate what percentage of its orders processed through DOE flow through but it is likely that it should approximate 100% of such orders. In contrast, the NYSPSC indicated in its December 2, 1999 *ex parte* that in September, 1999, BA-NY flowed through only 66% of CLEC UNE-Platform POTS orders. Such a comparison thus does not demonstrate parity of service.

BA-NY's December 6 *ex parte* filing concerns, *inter alia*, UNE order flow-through for individual CLECs from June through October 1999. Much of this submission has been deleted from the public filing as confidential.<sup>2</sup> The public version contains bar graphs purporting to show UNE order flow-through results for three unidentified CLECs. Unlike data collected pursuant to the C2C Reports, this data does not indicate that it has been verified by the NYSPSC or other objective entity. Its relationship and relevance to the C2C Report measurements is unclear. The data provides no basis to conclude that BA-NY has improved its performance of UNE order flow-through.

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<sup>2</sup> These comments on the BA-NY December 6 *ex parte* do not address confidential information redacted from the public filing, since we do not have access to that information.

## **2. Stand-Alone Unbundled Local Loops**

BA-NY filed an *ex parte* letter and attachments on November 24, 1999, which include a page captioned "Corrected Hot Cut Report" covering hot cut results through the first 21 days of October 1999. Hot cut results have been and continue to be a matter of intense controversy between BA-NY, the NYSPSC and AT&T. The data submitted on November 24 does not indicate whether it was collected pursuant to procedures that require BA-NY to inform CLECs of the status of a hot cut order two days before the due date for the hot cut. As such, the new data does not appear to resolve the disputes about the accuracy of hot cut provisioning data, and therefore does not provide a basis to determine that BA-NY's performance is satisfactory.

## **3. Directory Listings**

In an *ex parte* filed November 22, 1999, BA-NY spells out in some detail the software changes it intends to make by February 2000 to ensure that a customer hot cut to a CLEC will not be dropped from directory listings. This representation gives more substance to BA-NY's prior assertions that it would indeed provide such software fixes. However, the fact remains that the system is not yet in place and its efficacy cannot yet be demonstrated.

## **4. xDSL Provisioning**

BA-NY made an *ex parte* submission dated November 22, 1999 describing its continuing efforts to develop metrics and address other open issues with regard to xDSL provisioning. In particular, BA-NY discusses its progress in developing a loop information database CLECs can access for technical information relevant to xDSL services, other means by which the company provides CLECs xDSL-related information, its xDSL tariff, and other pricing issues. We

welcome this filing as an indication of BA-NY's continuing efforts to create the conditions under which CLECs will have a meaningful opportunity to compete in providing xDSL services.

However, delivery of those conditions remains in the future.

BA-NY filed an *ex parte* document dated December 10, 1999 representing that it is prepared to set up a structurally separate affiliate to provide advanced services, as that term is defined in the Commission's October 6, 1999 order approving the merger of the Ameritech Corporation with SBC Communications, Inc. ("SBC Order").<sup>3</sup> This development offers further hope for competitive xDSL provisioning in New York by placing BA-NY's current xDSL operations on a more even footing with CLECs seeking to offer xDSL.

However, the devil is in the details. BA-NY has filed only a statement of intent and a list of general commitments as to what the new affiliate and BA-NY will and will not do concerning advanced services. While BA-NY has committed to establish the affiliate on the terms outlined in the SBC Order, it has indicated several exceptions and clarifications that will need to be spelled out in whatever order establishes the affiliate. Without the proposed language of such an order, in particular the provisions concerning self-dealing, cross-subsidization, asset transfer, joint marketing and other competition-related issues, it is not possible to determine how the creation of such an affiliate would affect xDSL competition in New York. This BA-NY

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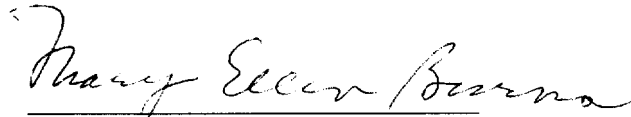
<sup>3</sup> *In re Application of Ameritech Corporation, Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*, CC Docket No. 98-141, *Memorandum Opinion and Order*, FCC 99-279 (October 6, 1999).

For Public Inspection

New York State Attorney General's Ex Parte Statement  
Bell Atlantic New York 271 Application  
December 14, 1999

promise, while very useful, cannot alone provide the basis to conclude that BA-NY is now providing its competitors a meaningful opportunity to compete in offering xDSL services.

Respectfully submitted,

A handwritten signature in cursive script, reading "Mary Ellen Burns".

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